IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 49 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GAURISHANKAR SOMESHWAR SEVAK

Versus

UTKANTHESHWAR MAHADEV TRUSTEE KANTILAL GANPATRAM PUJARI

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Appearance:

MR KL PANDYA for Petitioner No. 1-2

MR ASHOK K PADIA for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/07/2004

ORAL JUDGEMENT

1. This Revision Application is preferred by original defendants - tenants against judgment and decree passed by 5th Extra Assistant Judge, Kheda at Nadiad, in Regular Civil Appeal No. 36 of 1998, dismissing the

Appeal filed by the present petitioners - original defendants against the judgment and decree passed by Civil Judge (JD), Kapadvanj, in Regular Civil Suit No. 189 of 1996, on 27.1.1998, directing eviction of the present petitioners.

2. Short facts give rise to this Revision Application are, present respondents - plaintiffs in Regular Civil Suit No.189 of 1986, purchased suit property i.e. house situated near Utkantheshwar Mahadev Temple on 8.6.1986 from one Dinkarrai Mangaldas Trivedi, wherein present petitioner No.1 was the tenant of earlier owner. The suit came to be filed on the ground that defendant No.1 petitioner No.1 herein was not using this suit premises and had illegally transferred and sublet the suit property to defendant No.2 petitioner No.2 herein. It was also made a ground of the suit that, original tenant defendant No.1 parted with exclusive possession of the suit property and transferred the same for the monetary consideration to petitioner No.2 herein while defendant No.1 was staying in another house owned by one Balchandra. In the said suit, eviction as well as rent due from 23.6.1986 at the rate of Rs.25/- per month was also demanded.

3. In written statements both the defendants denied the suit of the plaintiff in toto and stated that defendant Nos.1 and 2 petitioners herein were related to each other and as such defendant No.2 was permitted by defendant No.1 for temporary installation of sewing machine in the suit house because defendant No.2 was a Tailor. In no way, according to the petitioner, they committed breach of tenancy nor any provisions of law. They also took the defence that landlords were threatening them to vacate the suit premises and ultimately they were compelled to file Regular Civil Suit No.113/86 for permanent injunction against the landlord, and in the said suit, a panchnama through Court Commissioner was executed, in which it was revealed that both the defendants were staying together in the suit premises and households of defendant No.1 were found at the suit property. The learned Trial Judge, after recording the evidence of both the parties, and after hearing learned Advocates for the parties, was pleased to decree the suit, vide judgment and order dated 27.1.1998 and directed the defendants present petitioners to hand over the possession of the suit premises to plaintiffs till 30th of April, 1998. Decree of arrears was also passed to the extent that till the plaintiffs obtain possession of the suit premises, they were required to be

paid by the defendants rent at the rate of Rs.25/- per month. The said judgment and decree came to be challenged by the original defendants in the said Regular Civil Appeal No. 36/98 in the Court of District Judge, Kheda at Nadia, but as aforesaid, the Appeal also met the fate of dismissal and hence this Revision Application.

4. Learned Advocate Mr. K.L. Pandya for the petitioners and learned Advocate Mr. Ashok K Padia for the respondents were heard at length. Learned Advocate for the petitioners has provided necessary copies of depositions recorded and other necessary records. Both the learned Advocates have extensively addressed this Court and, therefore, this matter is disposed of finally in the light of the contentions raised and in the light of the material produced for the perusal of this Court.

5. To prove his case, on behalf of the plaintiffs, 7 witnesses were examined. Out of which, plaintiff was examined at Exh. 46. Witness Sabjibhai was examined at Exh. 71. He being Deputy Mamlatdar, produced electoral rolls of village Vaghjipura and other villages, pertaining to the year 1984, which established that at the relevant juncture, defendant No.2 was staying in the suit property while defendant No.1 was staying in separate house owned by one Balchandra. Electoral roll is produced at Exh. 74. PW-3 Revabhai Punjabhai Vankar was examined at Exh.73, who also was Talati at Vaghjipura, and produced electoral rolls in respect of suit house denoting that in the suit house at the relevant juncture in 1984 family of defendant No.2 was staying. PW-4 Gaurishankar Bhulabhai Sekani was examined to establish the ration cards at Exhibits 76 and 77 to denote that defendant No.1 and defendant No.2 had separate ration cards for separate residences. Ration cards pertained to defendant No.1 was in respect of the house belong to one Balchandra while ration card pertained to defendant No.2 was in respect of suit property. PW-5 Ashokumar Pranshankar Rayak in his oral evidence stated that near Utkantheswar Mahadev Temple, he had pan-bidi shop and the suit property was situated about 20 feet away from this shop, and further stated that the suit property was in the possession of the defendant No.2. PW-7 Thakatsinh Kalusinh Chauhan was examined by plaintiff, who was Sarpanch at village Vaghjipura and Vaghjipura was his native since his birth, who has clearly stated that defendant No.1 at relevant juncture had been staying in the house of Balchandra while defendant No.2 had been staying in the suit property. While defendant Nos.1 and 2 have examined themselves at Exh. 28 and Exh.127 and have produced the

receipts of rent paid by them including a certified copy of Civil Suit No. 113/86. In their depositions both the defendants reiterated this defence that since defendant No.2 was nearest relative of defendant No.1, he was allowed to put his sewing machine for a temporary period on account of he being Tailor and he was staying together with the family of defendant No.1. After appreciating this evidence on record, learned Trial Judge came to the conclusion that having regard to the documentary evidence which was in the shape of a public document i.e. electoral roll and ration cards including oral evidence, it was established that the possession was transferred by defendant No.1 to defendant No.2. The learned Trial Judge has extensively examined the evidence of each witness with reference to documentary evidence. The learned Trial Judge also dealt with each contention raised on behalf of defendants as well as plaintiffs. On concluding in favour of the plaintiffs in Regular Civil Appeal No.36 of 1998 though the present petitioners raised many contentions, the first appellate court came to the conclusion that the Trial Court did not err in passing a decree of eviction in Regular Civil Suit No.189 of 1986. It clearly appears that the learned Appellate Court in first appeal also considered and dealt with each contention of the present petitioners.

6. It is an established law that the scope of revision under Section 29(2) of the Bombay Rent Act is wider than the scope of Revision under Section 115 of the Civil Procedure Code, even then, concurrent findings of both the courts below, cannot be interfered with lightly and unless it is found that such a finding is not only against and contrary to the evidence on record but is patently and blatantly against the law, then findings reached by the trial court in the suit of the landlord against the tenant should ordinarily be interfered with. This principle is reiterated by the Supreme Court and this Court time and again. Therefore in the scope of this Revision, what is required to be considered is whether the findings arrived at by both the courts below are against the record, contrary to the evidence adduced and patently or blatantly perverse and erroneous that no prudent man would come to such conclusion. If the court is satisfied about this aspect, then only concurrent findings of the courts below can be interfered with.

7. Learned Advocate for the petitioners Mr. Pandya extensively urged on behalf of the petitioners referring to the deposition of each of the witnesses that the

courts below on particular say of particular witness ought not to have come to the conclusion that defendant No.1 parted with the exclusive possession. This court was taken extensively to the deposition of plaintiff Kantilal Ganpatram Pujari, PW-1 as well as other six witnesses. Attention of this court was drawn to the particular cross-examination of witnesses PW-2 Sabjibhai Hakjibhai, PW-3 Revabhai Punjabhai Vankar, PW-4 Gourishankar Bhulabhai Sevak and PW-7 Thakatsinh Kalusinh Chouhan. Out of them, PW-2 and PW-3 were official witnesses while PW-4 was the Secretary of a ration shop who registered the ration cards. The argument was, in view of the cross-examination that in ration shop though register is maintained and not produced, and in electoral rolls both the witnesses PW-2 and PW-3 were not in personal information about the preparing of electoral rolls, the Trial Court ought not to have placed any reliance on these witnesses and documentary evidence produced by them. It was also urged that even plaintiff Kantial Ganpatram Pujari PW-1 was admittedly staying in Ahmedabad and had no personal knowledge while other witnesses merely the witnesses of oral say. According to learned Advocate for the petitioners since the conclusion arrived at by the learned Trail Judge as well as First Appellate court, could not have been arrived at in view of the cross-examination of the witnesses, the conclusion of both the courts below are perverse.

8. Learned Advocate Mr. Padia was also heard in this regard and he stated that the documents produced by PW-2, PW-3 and PW-4 are public documents and bears presumptive value of evidence as per Section 114 of the Indian Evidence Act while both the documents are public documents as per Section 74 of the Evidence Act.

9. So far as facts of the case are concerned, with reference to the contentions raised on behalf of the petitioners, it is clear that an attempt is made via back door entry, to lead this court to re-appreciate or re-appraise the evidence recorded. On going through the evidence as well as the decisions of both the courts below, it becomes clear that the Trial Court as well as the First Appellate Court both have taken into consideration the evidence of each of the witnesses examined after careful scrutiny and the facts and circumstances as established through evidence, and after proper appreciation, the Trial Court came to the conclusion that the exclusive possession of the suit premises was transferred by the defendant No.1 to defendant No.2. Mere presumptive questions to the witness and the answers in cross-examination, would not

dislodge the presumption which arises under Section 114 of the Evidence Act unless it is shown that the documents produced were patently and inherently defective, and then, even the Trial Court placed reliance upon such documents. In such state of affairs one can say that perversity is crept in appreciation of evidence as well as in conclusion of the Trial Court. Having scrutinized the records minutely, it does not appear that the Trial Court was not required to attach weightage to the evidence of ration cards and electoral rolls, which the Trial Court has attached. On the contrary, both the courts below have appreciated the evidence as a whole. Each evidence corroborates the other. The documentary evidence corroborates the oral say and vis-a-vis, and in these circumstances, the Trial Court did not believe the defence of the defendants that they were jointly, and defendant No.2 with the permission of of defendant No.1, were staying in the suit premises and on the contrary by evidence it is established that at the relevant juncture defendant No.2 was staying in the suit premises while defendant No.1 was staying in separate premises.

10. Learned Advocate for the petitioners relied upon some decisions of this Court and other High Courts. In the matter of M/s Rameshchandra K. Patwa vs. Vithaldas Chimanlal, reported in 1993 (1) GLR 193 and 1993 (1) GLH 745, the principal laid down that the landlord must prove exclusively parting with the possession of suit property and that too on monetary consideration is vehemently advanced by learned Advocate for the petitioners. One cannot have any dispute as to the principle of law established since long that to prove sub-tenancy or parting of exclusive possession of suit premises by the original tenant, it must also be proved that the said parting was with monetary consideration. In this respect, when we refer to the facts of this case, by evidence, it is not only proved that the defendant No.1 parted with the possession, but it is proved to the extent that the defendant No.2 was staying in the suit premises, while during that juncture of the time defendant No.1 was staying in some other house owned by one Balchandra. True it is that, as contended by learned Advocate for the petitioners, none of the witnesses stated that the defendant No.1 was receiving some monetary consideration from defendant No.2. In natural course of events, it would be stretching too far to come to the conclusion that any third party would know about the transaction between defendant Nos. 1 and 2 herein or between any tenant and sub-tenant. Therefore, the law is, whenever the exclusive possession is proved, especially in cases like this, it is always difficult for

the landlord to produce direct evidence of monetary consideration between the tenant and sub-tenant. The court, therefore, is permitted to infer monetary consideration in appropriate case of parting with exclusive possession in any manner, according to the facts and circumstances of the case. Here, the defence taken by the defendant Nos. 1 and 2 as aforesaid has been rejected by both the courts below for the cogent reasons. This view is fortified by the decision of this Court in the matter of KANAIYALAL L. RANPARA vs. DAHYALAL P. TANK, reported in 2001 (1) GLH 273 and, therefore decisions cited by learned Advocate for the petitioner aforesaid, would not be helpful to the petitioners. Learned Advocate for the petitioners also cited a decision of the High Court of Allahabad, in the matter of TEJ SHANKER CHAUBEY vs. TEJ NARAINSINGH, reported in AIR 1973, Allahabad 229 wherein the High Court of Allahabad observed that merely electoral roll would not establish the sub-tenancy and at the most electoral rolls may be the evidence of occupancy.

11. True it is that in absence of other evidence, merely on electoral rolls, the presumption cannot be drawn that there was a sub-tenancy between the tenant and sub-tenant, but this is not a case herein. In the present case there are separate ration cards and other oral evidence as well on record to come to the conclusion that defendant No.2 occupied suit premises while defendant No.1 occupied other premises than the suit premises. This decision also would not helpful to the present petitioners.

12. Learned Advocate for the petitioner also cited a decision of this court in the matter of POPATLAL VADILAL BHANSALI & ORS vs. KASTURBHAI RANCHHODBHAI SOI & ORS., as reported in 2003 (3) GLR 2595, wherein with reference to a partnership firm, this Court ruled that mere absence of tenant from the premises ipso facto would not lead to the conclusion that the tenant had transferred or assigned the exclusive possession in favour of other partners. These are not the facts of the case on hands.

13. Having taken the overall view of the matter, it clearly appears that conclusions of both the courts below are based on the evidence on record, the conclusions are according to law as well, because the courts below properly appreciate the evidence and placed due weightage to the public documents according to law. On the contention that because the Trial Court disbelieved the defence of the defendants or for the contention that relying on some portion of cross-examination of the

witnesses, the Trial Court ought to have come to some different conclusion, the interference of this Court would not be proper to substitute altogether a different view nor it is a perversity as envisaged by law, to be taken care of in the scope of revisional powers of this High Court under Section 29(2) of the Bombay Rent Act.

14. In the above view of the matter, this Revision Application stands dismissed. Rule is discharged. Interim relief granted by this court on 24.2.2004 shall continue till eight weeks from today and in any circumstances, the same shall not be extended further.

(J.R. Vora, J.)

p.n.nair